

Bill no.:	<u>Committee Print</u>
Amendment no.:	<u>16</u>
Date offered:	<u>3/19/03</u>
Disposition:	<u>Withdrawn</u>

AMENDMENT TO COMMITTEE PRINT**OFFERED BY MR. MARKEY**

Title VII is amended by striking sections 7082, 7083, and 7084 and inserting the following:

1 **SEC. 7082. FRAUDULENT OR MANIPULATIVE PRACTICES.**

2 (a) UNLAWFUL ACTS.—It shall be unlawful for any
3 entity, directly or indirectly, by the use of any means or
4 instrumentality of interstate commerce or of the mails to
5 use or employ, in the transmission of electric energy in
6 interstate commerce, the sale of electric energy at whole-
7 sale in interstate commerce, the transportation of natural
8 gas in interstate commerce, or the sale in interstate com-
9 merce of natural gas for resale for ultimate public con-
10 sumption for domestic, commercial, industrial, or any
11 other use, any fraudulent, manipulative, or deceptive de-
12 vice or contrivance in contravention of such rules and reg-
13 ulations as the Federal Energy Regulatory Commission
14 may prescribe as necessary or appropriate in the public
15 interest.

16 (b) APPLICATION OF FEDERAL POWER ACT TO THIS
17 ACT.—The provisions of section 307 through 309 and 313
18 through 317 of the Federal Power Act shall apply to viola-
19 tions of section 101 of this Act in the same manner and
20 to the same extent as such provisions apply to entities sub-
21 ject to Part II of the Federal Power Act.



1 **SEC. 7083. REPORTING REQUIREMENTS IN ELECTRIC**
2 **POWER SALES AND TRANSMISSION.**

3 (a) AUDIT TRAILS.—Section 304 of the Federal
4 Power Act is amended by adding the following new sub-
5 section at the end thereof:

6 “(c)(1) The Commission shall, by rule or order, re-
7 quire each person or other entity engaged in the trans-
8 mission of electric energy in interstate commerce or the
9 sale of electric energy at wholesale in interstate commerce,
10 and each broker, dealer, and power marketer involved in
11 any such transmission or sale, to maintain, and periodi-
12 cally submit to the Commission, such records, in electronic
13 form, of each transaction relating to such transmission or
14 sale as may be necessary to determine whether any person
15 has employed any fraudulent, manipulative, or deceptive
16 device or contrivance in contravention of rules promul-
17 gated by the Commission.

18 “(2) Section 201(f) shall not limit the application of
19 this subsection.”.

20 (b) NATURAL GAS.—Section 8 of the Natural Gas
21 Act is amended by adding the following new subsection
22 at the end thereof:

23 “(d) The Commission shall, by rule or order, require
24 each person or other entity engaged in the transportation
25 of natural gas in interstate commerce, or the sale in inter-
26 state commerce of natural gas for resale for ultimate pub-



1 lic consumption for domestic, commercial, industrial, or
2 any other use, and each broker, dealer, and power mar-
3 keter involved in any such transportation or sale, to main-
4 tain, and periodically submit to the Commission, such
5 records, in electronic form, of each transaction relating to
6 such transmission or sale as may be necessary to deter-
7 mine whether any person has employed any fraudulent,
8 manipulative, or deceptive device or contrivance in con-
9 travention of rules promulgated by the Commission.”.

10 **SEC. 7084. PENALTIES.**

11 (a) CRIMINAL PENALTIES.—Section 316 of the Fed-
12 eral Power Act (16 U.S.C. 825o(c)) is amended as follows:

13 (1) By striking “\$5,000” in subsection (a) and
14 inserting “\$5,000,000 for an individual and
15 \$25,000,000 for any other defendant”

16 (2) By striking “\$500” in subsection (b) and
17 inserting “\$1,000,000”.

18 (2) By striking subsection (c).

19 (b) CIVIL PENALTIES.—Section 316A of the Federal
20 Power Act (16 U.S.C. 825o-1) is amended as follows:

21 (1) By striking “section 211, 212, 213, or 214”
22 each place it appears and inserting “Part II”.

23 (2) By striking “\$10,000 for each day that
24 such violation continues” and inserting “the greater



1 of \$1,000,000 or three times the profit made or gain
2 or loss avoided by reason of such violation”.

3 (3) By adding the following at the end thereof:

4 “(c) AUTHORITY OF A COURT TO PROHIBIT PER-
5 SONS FROM CERTAIN ACTIVITIES.—In any proceeding
6 under this section, the court may censure, place limita-
7 tions on the activities, functions, or operations of, suspend
8 or revoke the ability of any entity (without regard to sec-
9 tion 201(f)) to participate in the transmission of electric
10 energy in interstate commerce or the sale of electric en-
11 ergy at wholesale in interstate commerce if it finds that
12 such censure, placing of limitations, suspension, or revoca-
13 tion is in the public interest and that one or more of the
14 following applies to such entity:

15 “(1) Such entity has willfully made or caused to
16 be made in any application or report required to be
17 filed with the Commission or with any other appro-
18 priate regulatory agency, or in any proceeding before
19 the Commission, any statement which was at the
20 time and in the light of the circumstances under
21 which it was made false or misleading with respect
22 to any material fact, or has omitted to state in any
23 such application or report any material fact which is
24 required to be stated therein.



1 “(2) Such entity has been convicted of any fel-
2 ony or misdemeanor or of a substantially equivalent
3 crime by a foreign court of competent jurisdiction
4 which the court finds—

5 “(A) involves the purchase or sale of elec-
6 tricity, the taking of a false oath, the making
7 of a false report, bribery, perjury, burglary, any
8 substantially equivalent activity however de-
9 nominated by the laws of the relevant foreign
10 government, or conspiracy to commit any such
11 offense;

12 “(B) arises out of the conduct of the busi-
13 ness of transmitting electric energy in interstate
14 commerce or selling or purchasing electric en-
15 ergy at wholesale in interstate commerce;

16 “(C) involves the larceny, theft, robbery,
17 extortion, forgery, counterfeiting, fraudulent
18 concealment, embezzlement, fraudulent conver-
19 sion, or misappropriation of funds, or securities,
20 or substantially equivalent activity however de-
21 nominated by the laws of the relevant foreign
22 government; or

23 “(D) involves the violation of section 152,
24 1341, 1342, or 1343 or chapter 25 or 47 of



1 title 18, United States Code, or a violation of
2 a substantially equivalent foreign statute.

3 "(3) Such entity is permanently or temporarily
4 enjoined by order, judgment, or decree of any court
5 of competent jurisdiction from acting as an invest-
6 ment adviser, underwriter, broker, dealer, municipal
7 securities dealer, government securities broker, gov-
8 ernment securities dealer, transfer agent, foreign
9 person performing a function substantially equiva-
10 lent to any of the above, or entity or person required
11 to be registered under the Commodity Exchange Act
12 or any substantially equivalent foreign statute or
13 regulation, or as an affiliated person or employee of
14 any investment company, bank, insurance company,
15 foreign entity substantially equivalent to any of the
16 above, or entity or person required to be registered
17 under the Commodity Exchange Act or any substan-
18 tially equivalent foreign statute or regulation, or
19 from engaging in or continuing any conduct or prac-
20 tice in connection with any such activity, or in con-
21 nection with the purchase or sale of any security.

22 "(4) Such entity has willfully violated any pro-
23 vision of this Act.

24 "(5) Such entity has willfully aided, abetted,
25 counseled, commanded, induced, or procured the vio-



1 lation by any other person of any provision of this
2 Act, or has failed reasonably to supervise, with a
3 view to preventing violations of the provisions of this
4 Act, another person who commits such a violation,
5 if such other person is subject to his supervision.
6 For the purposes of this paragraph no person shall
7 be deemed to have failed reasonably to supervise any
8 other person, if—

9 “(A) there have been established proce-
10 dures, and a system for applying such proce-
11 dures, which would reasonably be expected to
12 prevent and detect, insofar as practicable, any
13 such violation by such other person, and

14 “(B) such person has reasonably dis-
15 charged the duties and obligations incumbent
16 upon him by reason of such procedures and sys-
17 tem without reasonable cause to believe that
18 such procedures and system were not being
19 complied with.

20 “(6) Such entity has been found by a foreign fi-
21 nancial or energy regulatory authority to have—

22 “(A) made or caused to be made in any
23 application or report required to be filed with a
24 foreign regulatory authority, or in any pro-
25 ceeding before a foreign financial or energy reg-



1 ulatory authority, any statement that was at
2 the time and in the light of the circumstances
3 under which it was made false or misleading
4 with respect to any material fact, or has omit-
5 ted to state in any application or report to the
6 foreign regulatory authority any material fact
7 that is required to be stated therein;

8 “(B) violated any foreign statute or regula-
9 tion regarding the transmission or sale of elec-
10 tricity or natural gas;

11 “(C) aided, abetted, counseled, com-
12 manded, induced, or procured the violation by
13 any person of any provision of any statutory
14 provisions enacted by a foreign government, or
15 rules or regulations thereunder, empowering a
16 foreign regulatory authority regarding trans-
17 actions in electricity or natural gas, or con-
18 tracts of sale of electricity or natural gas, trad-
19 ed on or subject to the rules of a contract mar-
20 ket or any board of trade, or has been found,
21 by a foreign regulatory authority, to have failed
22 reasonably to supervise, with a view to pre-
23 venting violations of such statutory provisions,
24 rules, and regulations, another person who com-



1 mits such a violation, if such other person is
2 subject to his supervision.

3 “(7) Such entity is subject to any final order of
4 a State commission (or any agency or officer per-
5 forming like functions), State authority that super-
6 vises or examines banks, savings associations, or
7 credit unions, State insurance commission (or any
8 agency or office performing like functions), an ap-
9 propriate Federal banking agency (as defined in sec-
10 tion 3 of the Federal Deposit Insurance Act (12
11 U.S.C. 1813(q))), or the National Credit Union Ad-
12 ministration, that—

13 “(A) bars such person from association
14 with an entity regulated by such commission,
15 authority, agency, or officer, or from engaging
16 in the business of securities, insurance, bank-
17 ing, savings association activities, or credit
18 union activities; or

19 “(B) constitutes a final order based on vio-
20 lations of any laws or regulations that prohibit
21 fraudulent, manipulative, or deceptive conduct.

22 (8) Such entity is subject to statutory disquali-
23 fication within the meaning of section 3(a)(39) of
24 the Securities Exchange Act of 1934.”



1 (c) NATURAL GAS ACT PENALTIES.—Section 21 of
2 the Natural Gas Act is amended by adding the following
3 new subsection at the end thereof:

4 “(c) AUTHORITY OF A COURT TO PROHIBIT PER-
5 SONS FROM CERTAIN ACTIVITIES.—In any proceeding
6 under this section, the court may censure, place limita-
7 tions on the activities, functions, or operations of, suspend
8 or revoke the ability of any entity (without regard to sec-
9 tion 201(f)) to participate in the transportation of natural
10 gas in interstate commerce, or the sale in interstate com-
11 merce of natural gas for resale for ultimate public con-
12 sumption for domestic, commercial, industrial, or any
13 other use if it finds that such censure, placing of limita-
14 tions, suspension, or revocation is in the public interest
15 and that one or more of the following applies to such enti-
16 ty:

17 “(1) Such entity has willfully made or caused to
18 be made in any application or report required to be
19 filed with the Commission or with any other appro-
20 priate regulatory agency, or in any proceeding before
21 the Commission, any statement which was at the
22 time and in the light of the circumstances under
23 which it was made false or misleading with respect
24 to any material fact, or has omitted to state in any



1 such application or report any material fact which is
2 required to be stated therein.

3 "(2) Such entity has been convicted of any fel-
4 ony or misdemeanor or of a substantially equivalent
5 crime by a foreign court of competent jurisdiction
6 which the court finds—

7 "(A) involves the purchase or sale of nat-
8 ural gas, the taking of a false oath, the making
9 of a false report, bribery, perjury, burglary, any
10 substantially equivalent activity however de-
11 nominated by the laws of the relevant foreign
12 government, or conspiracy to commit any such
13 offense;

14 "(B) arises out of the conduct of the busi-
15 ness of transmitting natural gas in interstate
16 commerce, or the selling in interstate commerce
17 of natural gas for resale for ultimate public
18 consumption for domestic, commercial, indus-
19 trial, or any other use;

20 "(C) involves the larceny, theft, robbery,
21 extortion, forgery, counterfeiting, fraudulent
22 concealment, embezzlement, fraudulent conver-
23 sion, or misappropriation of funds, or securities,
24 or substantially equivalent activity however de-



1 nominated by the laws of the relevant foreign
2 government; or

3 “(D) involves the violation of section 152,
4 1341, 1342, or 1343 or chapter 25 or 47 of
5 title 18, United States Code, or a violation of
6 a substantially equivalent foreign statute.

7 “(3) Such entity is permanently or temporarily
8 enjoined by order, judgment, or decree of any court
9 of competent jurisdiction from acting as an invest-
10 ment adviser, underwriter, broker, dealer, municipal
11 securities dealer, government securities broker, gov-
12 ernment securities dealer, transfer agent, foreign
13 person performing a function substantially equiva-
14 lent to any of the above, or entity or person required
15 to be registered under the Commodity Exchange Act
16 or any substantially equivalent foreign statute or
17 regulation, or as an affiliated person or employee of
18 any investment company, bank, insurance company,
19 foreign entity substantially equivalent to any of the
20 above, or entity or person required to be registered
21 under the Commodity Exchange Act or any substan-
22 tially equivalent foreign statute or regulation, or
23 from engaging in or continuing any conduct or prac-
24 tice in connection with any such activity, or in con-
25 nection with the purchase or sale of any security.



1 “(4) Such entity has willfully violated any pro-
2 vision of this Act.

3 “(5) Such entity has willfully aided, abetted,
4 counseled, commanded, induced, or procured the vio-
5 lation by any other person of any provision of this
6 Act, or has failed reasonably to supervise, with a
7 view to preventing violations of the provisions of this
8 Act, another person who commits such a violation,
9 if such other person is subject to his supervision.
10 For the purposes of this paragraph no person shall
11 be deemed to have failed reasonably to supervise any
12 other person, if—

13 “(A) there have been established proce-
14 dures, and a system for applying such proce-
15 dures, which would reasonably be expected to
16 prevent and detect, insofar as practicable, any
17 such violation by such other person, and

18 “(B) such person has reasonably dis-
19 charged the duties and obligations incumbent
20 upon him by reason of such procedures and sys-
21 tem without reasonable cause to believe that
22 such procedures and system were not being
23 complied with.

24 “(6) Such entity has been found by a foreign fi-
25 nancial or energy regulatory authority to have—



1 “(A) made or caused to be made in any
2 application or report required to be filed with a
3 foreign regulatory authority, or in any pro-
4 ceeding before a foreign financial or energy reg-
5 ulatory authority, any statement that was at
6 the time and in the light of the circumstances
7 under which it was made false or misleading
8 with respect to any material fact, or has omit-
9 ted to state in any application or report to the
10 foreign regulatory authority any material fact
11 that is required to be stated therein;

12 “(B) violated any foreign statute or regula-
13 tion regarding the transmission or sale of elec-
14 tricity or natural gas;

15 “(C) aided, abetted, counseled, com-
16 manded, induced, or procured the violation by
17 any person of any provision of any statutory
18 provisions enacted by a foreign government, or
19 rules or regulations thereunder, empowering a
20 foreign regulatory authority regarding trans-
21 actions in electricity or natural gas, or con-
22 tracts of sale of electricity or natural gas, trad-
23 ed on or subject to the rules of a contract mar-
24 ket or any board of trade, or has been found
25 by a foreign regulatory authority, to have failed



1 reasonably to supervise, with a view to pre-
2 venting violations of such statutory provisions,
3 rules, and regulations, another person who com-
4 mits such a violation, if such other person is
5 subject to his supervision.

6 “(7) Such entity is subject to any final order of
7 a State commission (or any agency or officer per-
8 forming like functions), State authority that super-
9 vises or examines banks, savings associations, or
10 credit unions, State insurance commission (or any
11 agency or office performing like functions), an ap-
12 propriate Federal banking agency (as defined in sec-
13 tion 3 of the Federal Deposit Insurance Act (12
14 U.S.C. 1813(q))), or the National Credit Union Ad-
15 ministration, that—

16 “(A) bars such person from association
17 with an entity regulated by such commission,
18 authority, agency, or officer, or from engaging
19 in the business of securities, insurance, bank-
20 ing, savings association activities, or credit
21 union activities; or

22 “(B) constitutes a final order based on vio-
23 lations of any laws or regulations that prohibit
24 fraudulent, manipulative, or deceptive conduct.



1 “(8) Such entity is subject to statutory dis-
2 qualification within the meaning of section 3(a)(39)
3 of the Securities Exchange Act of 1934.”.

